Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

No. 79-467

CHIEF PADUKE DISTRIBUTING COMPANY - - - - - - - - - Petitioner

versus

JAMES LYNEL WILSON,
KENTUCKY WORKMEN'S COMPENSATION BOARD, and
JAMES R. YOCOM, Commissioner of Labor and Custodian of the Special Fund - Respondents

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY AND THE COURT OF APPEALS OF KENTUCKY

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QUESTIONS PRESENTED FOR REVIEW

Should this Court exercise jurisdiction in a case involving interpretation and constitutionality of the Kentucky Workmen's Compensation Statute, where the Kentucky courts have recently ruled on the constitutionality of the statutes in question?

Does a statute requiring a minimum and maximum payment for Workmen's Compensation benefits to a workman who suffers from an occupational disability violate the due process guarantee of the 14th Amendment?

Does a court's interpretation of the statute, which has never before been interpreted by that court, and which interpretation is incompatible with previous practice under the statute, deprive an individual of due process of law and equal protection of the laws guaranteed by the 14th Amendment?

SUPREME COURT OF THE UNITED STATES

No. 79-467

CHIEF PADUKE DISTRIBUTING COMPANY - *Petitioner*

v.

JAMES LYNEL WILSON,
KENTUCKY WORKMEN'S COMPENSATION BOARD, and
JAMES R. YOCOM, Commissioner of Labor and Custodian of the Special Fund - - - - - - - *Respondents*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY AND THE COURT OF APPEALS OF KENTUCKY

ARGUMENT

Kentucky Courts Have Already Ruled On the Issue of Constitutionality of the Kentucky Workmen's Compensation Statute, and This Court Should Thus Not Exercise Jurisdiction in This Case.

The petitioner, Chief Paduke Distributing Company, has petitioned this Court to issue a writ of certiorari to the Supreme Court of Kentucky and the Court of Appeals of Kentucky for the purpose of reviewing their actions in a Workmen's Compensation case, *James Lynel Wilson* v. *Chief Paduke Distributing Company*. In its petition, Chief Paduke Distribut-

ing Company complains that certain Kentucky Workmen's Compensation statutes are unconstitutional, or if those statutes are not unconstitutional that the interpretation which has been placed on the statutes by the courts of Kentucky is in itself unconstitutional. In particular, petitioner complains about two sections of the Kentucky Workmen's Compensation Act, KRS 342.730(1), and KRS 342.740(1). The respondent will address with more specificity the constitutional issues as related to these sections of the statute in a later portion of this argument. The respondent, in this argument, however, wishes to point out to this Court that Kentucky courts have just recently interpreted the sections of the statute in question, and the Kentucky courts have already found the statute itself to be constitutional.

The statutes complained of were interpreted by the Supreme Court of Kentucky in the case of *Apache Coal Company* v. *Rodney Fuller,* 541 S. W. 2d 933 (Ky., 1976). In the *Apache* case the Kentucky Supreme Court stated the obvious, that being that the two statutes in question mean exactly what they say. In other words, in Kentucky where one suffers from a disability entitling him to Workmen's Compensation benefits, those benefits are to be paid subject to maximum and minimum limits specified in KRS 342.740. The maximum and minimum benefit limits are computed by a formula which relates to the average weekly wage in the State of Kentucky.

Since the decision in *Apache* in 1976, the Supreme Court of Kentucky has had ample opportunity to over-

rule that opinion, as many cases, including the case at bar, have been before the Supreme Court of Kentucky on a motion for discretionary review. At each instance, the Supreme Court of Kentucky has refused to exercise a review of the case.

The Kentucky Court of Appeals, which is now an intermediate appellate court in Kentucky, had occasion to address the issue of constitutionality of the subject statutes in the case of *Yocum* v. *Gantley,* 566 S. W. 2d 176 (Ky. App. 1978). In the *Gantley* case the court announced that it could not hold *Apache* unconstitutional as it was a logical interpretation of the statute. The respondent offers this Court the following excerpts from the opinion of Judge Howard:

> The interpretation of KRS 342.740(1) by the court in *Apache, supra,* allowed minimum weekly benefits for permanent partial disability. We are aware that the General Assembly has amended KRS 342.730(1)(b), effective January 1, 1977, in response to the *Apache* decision.
>
> In *Cantrell* v. *Stambaugh,* Ky., 420 S. W. 2d 677, 678 (1967), the court states that '[T]he maximum award base is a matter of substance . . . and thus governed by the statutes in effect at the time of the accident.'
>
> And in *Collier* v. *Hope Coal Co.,* Ky., 269 S. W. 2d 278 (1954), the court makes these statements, at page 280, concerning changes in the Workmen's Compensation law, KRS 342.111:
>
> '. . . In fact, the statute was enacted to correct a defect in the Workmen's Compensation Act which was brought into sharp focus by our

> opinion in *Harrison* v. *Tierney Mining Company,* 276 Ky. 637, 124 S. W. 2d 757, holding that the dependents of an injured employee could not recover undue and unpaid weekly compensation installments after the employee's death-that the right to such weekly payments did not survive his death. As a consequence, it naturally follows that any increase in the amount allowed by the statute for death was not intended to apply retroactively.

Both in *Harrison* v. *Tierney Mining Company, supra,* and in *Apache,* the court states that it is interpreting the respective statutes and that modification of the statutes should come from the legislature.

[2, 3] We cannot hold *Apache* unconstitutional as it was the logical interpretation of KRS 342.730 (1)(b) as that statute read before amendment. The statute in effect at the time of Gantley's accident and its interpretation in *Apache* governs the amount of the award he is to receive. Id. at 178.

For these reasons, it is apparent that the issues which the petitioner attempts to raise before this Court have already been decided by the appellate courts of the State of Kentucky. Respondent submits that as this case involves payment of compensation under a State Workmen's Compensation Act, and as that statute has been recently interpreted by appellate courts of that State, including the issue of constitutionality, this Court should not grant the petition for the writ of certiorari. Furthermore, respondent submits there is no sufficient Federal question in this case to warrant the intervention of the court in this matter.

A Statute Which Requires a Minimum and Maximum Payment for Workmen's Compensation Benefits to a Workman Who Suffers From an Occupational Disability Does Not Violate the Due Process Guaranty of the 14th Amendment.

In the previous argument the respondent has addressed the fact that Kentucky courts have already sufficiently reviewed the statute in question; and that Kentucky courts have already ruled upon the constitutional aspects of the statute. In this argument respondent will address specifically the issue of whether the statutes which require a minimum and maximum payment for Workmen's Compensation benefits are unconstitutional. For the benefit of the Court we will once again set out the specific sections of the statute in issue. KRS 342.730(1) states:

> Income benefits for disability shall be paid to the employee as follows, subject to the maximum and minimum limits specified in KRS 342.740.

KRS 342.740(1) provides:

> The minimum weekly income benefits for disability shall be not less than twenty (20%) per cent (computed to the next higher multiple of $1.00) and the maximum weekly income benefit shall not exceed sixty (60%) per cent (computed to the next higher multiple of $1.00) of the average weekly wage of the State as defined herein. In any event, income benefits shall not exceed the average weekly wage of the injured employee.

When the above quoted statutes are read together, as they must be, it is apparent that in Kentucky if one is eligible for income benefits, meaning if a workman has an occupational disability, then his benefits must fall between a minimum and a maximum. The respondent wishes to emphasize that the portion of the statute complained of as being unconstitutional, KRS 342.740(1), contains not only a minimum compensation which shall be payable, but contains a maximum.

In the present case the respondent, James Lynel Wilson, was found by the Kentucky Workmen's Compensation Board to suffer from a twenty (20%) per cent occupational disability. It should be noted that in Kentucky, Workmen's Compensation benefits are payable based upon occupational disability, as distinguished from functional disability (mere bodily impairment). In the case of *Osborne* v. *Johnson,* 432 S. W. 2d 800 (Ky., 1968), the Kentucky Court of Appeals, then Kentucky's highest court, stated that medical percentages were not determinative, but that the real test was whether an individual suffered a permanent injury of appreciable proportions which would impair a man's earning capacity.

The petitioner argues in his brief that in Kentucky a minimum payment of Workmen's Compensation benefits is made irrespective of the "*inconsequential degree* of disability." (Petitioner's brief, p. 2). The respondent, however, submits that the word "inconsequential" can never properly describe any degree of occupational disability. By its very nature, occupational disability indicates that the disability will not be

inconsequential, but that it will affect the man's ability to labor in the market place and earn a living. After realizing that the premise of the petitioner's argument is based on a fallacy, that being that occupational disability can be inconsequential, then, the requirement of minimum and maximum payments for compensation benefits in Kentucky is seen to be quite reasonable.

It is interesting that the petitioner, who obviously represents an insurance carrier, has not made an argument that maximum limitations on payment of disability are unconstitutional, he only argues that minimum payments are unconstitutional. For example, in the year in which the respondent, James Lynel Wilson, was injured, a workman in Kentucky who received Workmen's Compensation benefits could receive a maximum of $96 per week and a minimum of $32 per week. Even though a man might make $300 a week and be totally disabled, the maximum compensation which he could draw was limited to $96. Obviously, a limitation on the maximum amount of benefits payable to an injured employee inures to the advantage of the employer and the insurance carrier. On the other end of the scale, a minimum limitation on benefits works to the advantage of the injured employee. Thus, in the Kentucky statutes, there is a balancing between the employee on one end of the scale of benefits and the employer on the other end. For obvious reasons the petitioner has failed to draw this to the Court's attention.

Throughout the long and tortured course of this present Workmen's Compensation case, in which the initial hearing was held on June 26, 1976, the then defendant (now petitioner), has argued that James Lynel Wilson does not suffer from any occupational disability. This is no doubt the reason why petitioner refers to Wilson's injury as inconsequential. This argument, however, was rejected at each level of decision making in the case. Indeed, Dr. George Beard, who had originally treated James Wilson for his knee injury, had stated that he told Wilson after the January accident for which compensation was awarded in this case that Wilson could not return to his work as the driver of a beverage truck without a helper. The Doctor further informed Wilson that he felt Wilson would simply have to look for another job, that he could not continue to do the heavy type of work he had performed in the past. Based primarily upon this testimony of Dr. George Beard, the Kentucky Workmen's Compensation Board found James Wilson to suffer from a 20% occupational disability. The Board then went on to apportion the award due to the fact that James Wilson had had a preexisting active disability with his knee. The Board then found the degree of occupational disability which existed immediately prior to the subject injury to have been 15%. The remaining 5% of the occupational disability was apportioned between the employer and the second injury fund of Kentucky, the Special Fund. The Board went on to find that James Wilson suffered an injury of *appreciable proportions* in the accident of January 13,

1976. It was in the *Osborne* case, *supra,* in which the Kentucky Court had stated that whether an employee had suffered an injury of appreciable proportions was one of the tests of occupational disability.

The petitioner in the first section of his argument goes on to declare that in his opinion KRS 342.740(1), as interpreted in *Apache* v. *Fuller,* 541 S. W. 2d 933 (Ky., 1976), is an unreasonable and arbitrary legislative act. Petitioner bases this argument on the premise that as income benefits are provided for workers in relation to the reduction of their power to earn money, a requirement that a minimum amount be paid has no reasonable relation to the objective of Workmen's Compensation. Once again, however, we would emphasize to this Court that the minimum amounts required to be paid by the statute are tied in with a maximum amount to be paid by the statute. Thus, if a workman in the State of Kentucky suffers an occupational disability, then he will be paid benefits which fall between the minimum amount payable in the state and the maximum amount. The Supreme Court of Kentucky in the *Apache* case, recognized quite clearly that these provisions relating to minimums and maximums are tied together:

> The Legislature has, however, limited its largesse by providing that the maximum weekly income benefits shall not exceed 60% of the average weekly wage of the State (at the time of his injury, $81), but in an effort to avoid the label of parsimony it has also provided that the minimum weekly income

> benefits for disability shall not be less than 20% of the average weekly wage of the State (at the time of this injury, $27). (Id. at 934-5).

Since the minimum compensation requirements are linked to a maximum, then it cannot seriously be argued that the statute is arbitrary or unreasonable.

The petitioner, at a later point in his brief argues,

> . . . the requirement that a minimum amount be paid for even a most *trivial* injury has absolutely no relation to the objective of the Workmen's Compensation Act, or to the cognizable 'disability' for which compensation is intended, or to the principle declared in *Osborne* v. *Johnson, supra.* (Petitioner's Brief, pp. 19-20).

Once again, we find the petitioner loosely throwing around phrases such as "most trivial injury", when as we have already shown to this Court an award for Workmen's Compensation in Kentucky is only to be made where there is, indeed, some degree of occupational disability, which by its very nature and definition will never be trivial.

In fact, the section of the statute about which the petitioner complains in his brief is really nothing more than an attempt to balance benefits payable between the employee and the employer. The petitioner argues that it seems unfair in the present case to allow a man who, according to the petitioner, should receive $3.30 per week for a 5% occupational disability, to receive $32 per week. On the other side of the coin, if Wilson had been making $400 per week and was totally and

permanently disabled and would then only draw $96 per week, the results seem just as unjust. Yet, no one argues that maximum limitation is unconstitutional. The act cannot be viewed in this piece meal fashion. Instead, the various sections of the statute work together to hold benefits within certain reasonable levels of payment. On the lower end the employee will benefit, and on the upper end the employer will benefit.

The respondent wishes just briefly to comment on the mathematical calculations which the petitioner cites in his brief to sustain the proposition that the results of the act are somehow unfair or arbitrary. Once again it should be noted that all these calculations are based upon the faulty premise that a small degree of occupational disability is really only a trivial injury. Without wishing to be redundant, the respondent would submit to the Court that in light of the requirement in Kentucky that the disability be an occupational rating, which by its very definition means that it effects one's wage earning capacity, then even a one or two per cent disability is not trivial, and requiring the payment of $32 per week for such a disability rating is not arbitrary or unconscionable.

A Court Interpretation of a Statute Which Has Never in the Past Been Interpreted By the Court, Does Not Deprive the Employer of Due Process of Law and Equal Protection of the Laws Guaranteed By the 14th Amendment Because That Interpretation Is Incompatible With the Previous Understanding of the Statute.

The petitioner, in its brief in support of the petition for writ of certiorari states that it does not believe this Court needs to find the act itself to be unconstitutional, but only that this Court should declare the interpretation as placed upon the Kentucky Statute by the Supreme Court of Kentucky to be unconstitutional. Petitioner further argues that the interpretation of the Kentucky Court deprives an employer and insurance carrier of due process of law and equal protection of the law due to the fact that that interpretation changed the determination of benefits payable in a given case.

First, respondent will address this issue of whether the change in the interpretation of the statute deprives any party of due process of law or equal protection. Some background in the Workmen's Compensation Act in Kentucky is necessary in order to address this issue. It must be noted that the Kentucky Workmen's Compensation Statute was completely overhauled in 1972. After the 1972 revisions it has taken several years for sufficient court cases to have been decided in the appellate courts to interpret the various sections of the statute. During the interim, between the time of the passage of the act and those court interpretations,

the Kentucky Workmen's Compensation Board has placed its interpretation upon the act, and attorneys in the State have practiced under that interpretation until those interpretations have been changed by the courts. The particular section of the statute about which the petitioner objects, KRS 342.740(1), had never been interpreted by the highest court in Kentucky prior to the time of the *Apache* decision in 1976.

The issue as claimed by the petitioner is whether or not the fact that the Kentucky court interpreted the act in a different manner from which it had been interpreted by the Kentucky Workmen's Compensation Board and by practicing attorneys, could work to deprive the employer of the due process of law and equal protection of the laws guaranteed by the 14th Amendment. Petitioner has failed to cite any cases in support of this proposition, for, indeed, it is apparent that the Kentucky Supreme Court is charged with the ultimate task of interpreting Kentucky statutes. Thus, even though its interpretation may be different than either a lower court interpretation or the interpretation of the Workmen's Compensation Board, that fact would not cause the court's decision to be unconstitutional.

The petitioner in his brief does cite cases which deal with the problem of construing statutes which contain obvious errors, inconsistencies, or ambiguities. In the case at bar, however, the respondent submits that the two sections of the statute about which the petitioner complains, KRS 342.730(1) and KRS 342.-740(1), are quite clear. As these statutes pertain to

maximum/minimum limitations, there is no ambiguity whatsoever. In the *Apache* case the Kentucky court recognized this and interpreted the sections quite literally, thus allowing for minimum/maximum limitations on disability income benefits in Kentucky. Despite all the petitioner's protestations, KRS 342.730(1) states quite clearly that income benefits for disability shall be paid to the employee subject to minimum/maximum limitations. In addition, KRS 342.740(1) specifies quite clearly what those limitations shall be. The court in *Apache* noted that its decision might not be popular with employers and insurance carriers, but that the proper place to change the statute was by legislative act and not some strained court interpretation of the act.

> We remind those who may be dissatisfied with this result that the entire concept of Workmen's Compensation is a creature of statute. Our function in interpreting statutes is limited to analyzing and applying what the legislature has said, and does not extend to psychoanalyzing the legislature and applying what it may have meant to say. Cries for modification should be addressed to the legislature. *Id.* at 935.

The fact that insurance carriers in Kentucky had never interpreted this section in this manner would not effect the constitutionality of either the section itself or the interpretation. Petitioner further complains that the statute and the court's interpretation are inequitable to its position. Petitioner fails to recognize, however, that Workmen's Compensation statutes are designed

to balance benefits between the opposing views of the employer and the employee.

Finally, the petitioner argues in its brief that the Kentucky court failed to apply proper principles of interpretation in the construction of statutes. In support of this argument petitioner cites the case of *Barnes* v. *Anderson National Bank,* 293 Ky. 592, 169 S. W. 2d 833 (1944), which deals with construction and interpretation of statutes of *doubtful meaning.* In such a case the court notes that the interpreting court should be constrained to look at the legislative intent and also at the legislative, judicial and administrative construction placed on the act. This case, however, is not applicable to the present statute, because the present statute under discussion is not of doubtful meaning. The words are quite clear and are subject to but one interpretation, that being that in Kentucky if a man is awarded occupational disability benefits, those benefits are payable within the ranges provided for in the minimum and maximum sections of the statute. The Kentucky Court recognized in the *Apache* case that the Section was subject to but one interpretation.

One other factor must be mentioned by the respondent which is almost lost in all the argument which has taken place within the State of Kentucky over the statute and the decision that interpreted it, *Apache.* In Kentucky, Workmen's Compensation is not a mandatory program for the employee. The program is voluntary, and the employee has a right to reject. This right of rejection is based upon a provision con-

tained in the Kentucky Constitution. Respondent submits that as Workmen's Compensation is voluntary on the part of the employee, once an employee accepts coverage of the act he should be entitled to every benefit specifically called for in the act. In other words, there is in effect a contractual relationship between the employee's acceptance or rejection of the act, and the benefits provided in the act. As Mr. Wilson, the claimant in the case below, had not rejected the act he should be entitled to all applicable benefits as provided in the act at the time of his injury. And, thus, the insurance carrier providing the coverage and the Special Fund, which is liable as a second injury fund for part of the coverage in this case, should not be allowed to attempt to declare certain sections of the act with which they are in disagreement as being unconstitutional and inapplicable. If the petitioner were to win its appeal, then in effect Mr. Wilson would have been denied his due process under both United States and Kentucky Constitution.

CONCLUSION

Respondent submits that this Court should not grant the petition for writ of certiorari of this case. This case involves primarily the issue of interpretation of a State statute governing Workmen's Compensation benefits. The courts of the State of Kentucky have just recently interpreted these statutes and the Court of Appeals has found them to be constitutional. For the reasons set forth in this brief the respondent submits that both the statute complained of and the interpretation of the Kentucky courts are constitutional. Furthermore, respondent submits that from a review of petitioner's brief in support of his writ of certiorari, it is quite apparent that the Kentucky statutes and, indeed, the whole field of Workmen's Compensation in the State of Kentucky has gone through an agonizing process of trying to redefine the meanings of the various statutes since their amendments in 1972. It would serve no purpose for this Court to take either the time or the effort to attempt to review the whole concept of Workmen's Compensation as it has evolved in the State of Kentucky, when the courts in the State of Kentucky have just recently interpreted the statute complained of in this action. For these reasons the respondent respectfully requests that this Court deny the petition of Chief Paduke Distributing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Response to Petition for Writ of Certiorari have been served on all parties required to be served by Rule 33 of this Court by mailing or delivering the same, First Class—Postage Prepaid in the case of mailing, as follows: Earle T. Shoup, Citizens Bank Building, Paducah, Kentucky 42001, attorney for petitioner, Chief Paduke Distributing Company; Cyril E. Shadowen, Assistant Counsel, Department of Labor, 801 West Jefferson Street, Louisville, Kentucky 40202, attorney for respondent, James R. Yocom, Commissioner of Labor and Custodian of the Special Fund; and J. Scott Getsinger, Acting Director, Workmen's Compensation Board, Department of Labor, 127 Building, U.S. Highway 127 South, Frankfort, Kentucky 40601.

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